

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2309 of 1985

WITH

SPECIAL CIVIL APPLICATION No 6533 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

B D NIKUM

Versus

GUJARAT PANCHAYAT SEVA PASANDGI MANDAL

Appearance:

MR VH DESAI for Petitioner
SERVED for Respondent No. 1
MR SV PARMAR for Respondent No. 2

CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 13/01/98

ORAL JUDGEMENT

1. The petitioner, an Ayurvedic doctor was given an appointment as a Medical Officer- Class III from 8th March 1982 by the second respondent- District Panchayat. It was a temporary appointment for a period of three months or till a regularly selected candidate through

Gujarat Panchayat Service Selection Board is available, whichever is earlier.

2. When the Panchayat Service Selection Board issued an advertisement in 1984 (annexure C), the petitioner applied for the same. The upper age limit was 35 years as on 1.12.1984.

3. As the petitioner was not called for selection on the ground that he is age-barred, he filed Special Civil Application No. 2309 of 1985. That petition was admitted and interim relief against termination of service was granted and he continued in service till 20th August 1997 because on 18th July 1997, the petition was dismissed for default and interim relief came to be vacated.

4. Thereafter, an application MCA No.1699 of 1997 was filed for restoration of the petition and the main petition has been restored.

5. He also filed Special Civil Application No. 6533 of 1997, for setting aside the termination order. Both these petitions were directed to be heard together and are heard and disposed of together by this judgment.

6. The main question is what is the correct birthdate of the petitioner. According to the School Leaving Certificate, his date of birth is 1.6.1944 and according to the affidavit of the petitioner's father, the correct birthdate is 1.6.1948. It is petitioner's case that the affidavit was produced before the respondent Panchayat and it was accepted and he was given the appointment as he was below 35 years of age on the date of his appointment. He has further submitted that under the Gujarat Panchayat Service (Classification & Recruitment) Rules, 1967, rule 7 deals with qualifications regarding age, education, experience etc. Rule 7(3) reads as under:-

"7. Qualification regarding age, education, experience etc.

xxxx

(3) Notwithstanding anything to the contrary contained in these rules or other relevant rules for the time being in force relating to the recruitment to any Panchayat Service or post, the upper age limit for the purpose of recruitment prescribed in such rules shall not apply to a

candidate who is already in Gujarat Government Service or Panchayat Service either as a temporary servant or a permanent servant officiating continuously for six months in a substantive or leave vacancy caused as a result of deputation of other servants and within the age limit prescribed for the posts at the time of his first appointment in Government Service or Panchayat Service as the case may be.

Provided that such upper age limit shall apply to such candidate in a case where recruitment to a post or service is done through competitive examination or by direct selection for which experience has not been prescribed as one of the qualification for such post:

Provided further that where a post requiring a medical, engineering or agriculture or diploma as a qualification is to be filled by direct selection through the Gujarat Panchayat Service Selection Board or District Panchayat Service Selection Committee, a Government Servant or a Panchayat Servant who was within the age limit when appointed to such post shall, if he subsequently applies for the same post, be entitled to relaxation from the application of upper age limit prescribed as aforesaid even if experience has not been prescribed as one of the qualifications for such post."

7. On the basis of the aforesaid provision, it is submitted that if his birthdate is taken as 1.6.1948, he was appointed initially within the upper age limit and, therefore, he would be eligible to be considered by Gujarat Panchayat Service Selection Board and, therefore, the Panchayat Service Selection Board ought to have considered him and he could not have been thrown out from consideration.

8. The Gujarat Panchayat Service Selection Board does not appear though served and does not seem to have considered these aspects and, therefore, that Board is required to be directed to consider what is his correct birthdate and whether the petitioner is eligible on the basis of his correct birthdate read with rule 7(3) quoted above. If the Board comes to the conclusion that he is eligible, the Board shall consider him for selection and if found fit for selection, shall place him in the select list and take necessary steps for seeing that he gets the appointment. On the other hand, if the Board comes to

the conclusion that on the basis of his correct age, he is not eligible and not entitled to be considered, the matter would end there. Even if he is considered eligible and thereafter he is not found fit to be selected, the question of appointment does not arise. The Board shall complete this exercise within three months from the date of receipt of this writ.

Rule is made absolute accordingly.

Special Civil Application No. 6533 of 1997 is merely consequential on account of vacating of the interim relief in the earlier petition and the consequent termination. In view of the directions given in the earlier petition, nothing is required to be done in this petition. Hence, notice discharged.
